IN THE HIGH COURT OF JUDICATURE OF BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.175 OF 2007
WITH
SECOND APPEAL NO.184 OF 2007

Baburao Dnyanu Jadhav. ..Appellant.

V/s.

Dhondiram D. Jadhav & Anr. ..Respondent.

Mr.M.S.Lagu for appellant.

CORAM: A.M.KHANWILKAR,J

DATE : JULY 9, 2007.

P.C. :

1. Heard counsel for the appellant.

2. The argument of the appellant that, the view taken by the Courts below, though concurrent, will have to be overturned, as the same is not consistent with the map of the surveyor. Inasmuch as if we were to go by the surveyor’s map, area of property Gat No.286 will be much more than 1 Hector 30 Are, which will be the holding of the defendant No.2 Putalabai Appa Shinde. No such argument was canvassed before the Courts below. The appellant is expected to lay foundation of relevant facts before the trial Court to assert this position. The surveyor, who had prepared the map, has been examined as witness before the trial

Court. If this position is not challenged during his evidence, the question of considering that aspect of the matter by the trial Court or for that matter the appellate Court does not arise.

3. Counsel for the appellant fairly accepts that such specific contention has not been taken before the lower Courts. In other words, the argument canvassed before this Court is pressed into service for the first time before this Court in these second appeals, which is essentially relating to factual possession of the plot. That cannot be countenanced. In my opinion, these appeals do not raise any substantial question of law much less in the context of section 83 of the Evidence Act, as is now contended.

4. Accordingly, these appeals fail and the same are dismissed.